

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

---

June 11, 2021

**VIA ELECTRONIC MAIL ONLY**

New Mexico Corrections Department  
Brian E. Fitzgerald, Esq.  
P. O. Box 27116  
Santa Fe, NM 87502-0116  
Email: [brian.fitzgerald@state.nm.us](mailto:brian.fitzgerald@state.nm.us)

**Re: Inspection of Public Records Act Complaint – Bella Davis**

Dear Mr. Fitzgerald:

Thank you for your response to our inquiry regarding the complaint filed with the Office of the Attorney General by Ms. Bella Davis alleging that the New Mexico Corrections Department (hereinafter the “Department”) violated the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019) (“IPRA”). As you know, Ms. Davis alleges that the Department violated IPRA in connection with her public records request dated March 18, 2021. Having thoroughly reviewed both her complaint and your response to our inquiry, we conclude that the Department violated IPRA by denying Ms. Davis’ request without a lawful exception under IPRA. We strongly recommend that the Department revisit its resolution of Ms. Davis’ request in light of the recent New Mexico Court of Appeals decision in *Dunn v. New Mexico Department of Game and Fish*, 2020-NMCA-026.

The Inspection of Public Records Act guarantees the people of the State of New Mexico access to “the greatest possible information” about governmental affairs. NMSA 1978, § 14-2-5. *See also Am. Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 25 (noting that the purpose of IPRA is “to promote the existence of (1) an informed electorate and (2) transparency in governmental affairs”). IPRA specifically provides that individuals may inspect and copy all “public records” with only limited and specifically enumerated exceptions. Section 14-2-1(A). We interpret IPRA’s various provisions in light of the “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“IPRA Guide”).

Ms. Davis emailed a public records request to the Department on March 18, 2021. In particular, she sought “[r]ecords containing addresses of the last residence (including street number, street, city and zip code) of each inmate currently incarcerated in New Mexico prisons.” Ms. Davis provided the Department her email address and telephone number in connection with her request. One day later, on March 19, 2021, the Department denied Ms. Davis’ request outright, citing to our IPRA Guide in support of its contention that “inmate addresses” did not relate to public business and therefore were not public records for the purposes of IPRA. In addition, the Department appeared to deny Ms. Davis’ request on the basis that she did not provide her mailing address in her request. In her complaint to our Office, Ms. Davis challenges both of these bases for the Department’s denial of her request.

Preliminarily, the recent decision of our Court of Appeals in *Dunn v. New Mexico Department of Game and Fish* itself forecloses the Department’s argument that “inmate addresses” need not be disclosed because they do not relate to public business. In *Dunn*, the Department of Game and Fish denied a public records request seeking the email addresses of applicants (private citizens) for hunting licenses, contending that the email addresses did not relate to public business and therefore were not public records subject to disclosure through IPRA. *See Dunn*, 2020-NMCA-026, ¶ 2. The Court of Appeals disagreed, holding that “IPRA’s definition of ‘relating to public business’ means simply that the requested records are connected to governmental affairs or official actions by or on behalf of public bodies.” *Id.* at ¶ 9 (internal quotation marks and citation omitted). Because the Department of Game and Fish had collected the email addresses at issue in connection with its program of issuing hunting licenses, the Court of Appeals concluded that “the email addresses NMDGF collected in connection with its licensing system constitute ‘public records’ that are subject to disclosure under IPRA in the absence of an applicable exception.” *Id.* at ¶ 11.

Given the Court of Appeals’ holding and reasoning in *Dunn*, the Department’s argument with respect to Ms. Davis’ request is plainly unavailing. The Department appears to have collected its “inmate addresses” in connection with its mission of providing for the incarceration of those who have been convicted of criminal offenses, and it therefore is quite apparent that “the requested records are connected to governmental affairs or official actions.” *Dunn*, 2020-NMCA-026, ¶ 9. And, while the Department bases its legal argument on outdated language from our IPRA Guide and *dicta* from *Cox v. New Mexico Department of Public Safety*, 2010-NMCA-096, ¶ 30-31, the Court of Appeals in *Dunn* specifically stated that “these are not among the exceptions listed or recognized by our Supreme Court” to disclosure through IPRA. *Dunn*, 2020-NMCA-026, ¶ 12. We therefore conclude that the Department could not, consistent with IPRA and prevailing case law, deny Ms. Davis’ request on the grounds that “inmate addresses” did not relate to public business.

As for the Department’s secondary contention that IPRA’s Section 14-2-8(C) permitted it to deny Ms. Davis’ request because she did not provide a mailing address (even while she had previously provided an email address and a telephone number), that statutory provision is simply not an exception to disclosure. Our Office has long since rejected the proposition that public bodies may utilize Section 14-2-8(C) as a means to deny public records requests where the requestor has already provided adequate contact information. *See* N.M. Att’y Gen. Letter to Patrick Hart, University of New Mexico, at 3 (Apr. 11, 2019) (concluding that “the Inspection of Public Records

Act does not permit a public body to deny a records request solely on the basis of the requestor's failure to provide a valid telephone number, at least where the requestor has provided another valid means of communication"). We have based this interpretation on our Supreme Court's previous holding that the purpose of Section 14-2-8(C) is to "facilitate the inspection procedures set forth in IPRA" and furnish the records custodian with sufficient contact information. *San Juan Agricultural Water Users Association v. KNME-TV*, 2011-NMSC-011, ¶ 30. As a result, to the extent that the Department may construe Section 14-2-8(C) as permitting it to deny Ms. Davis' request due to her failure to provide a mailing address, we strongly disagree and find that such a denial would be unlawful under IPRA.

Because the Department denied Ms. Davis' request (one day later) without an applicable exception, we urge it to reopen her request as soon as possible.<sup>1</sup> The Department should conduct a thorough search for responsive records and then review those records to determine whether and to what extent some may be exempt from disclosure. Going forward, we would emphasize to the Department that it may only, pursuant to IPRA, withhold or redact records based on "a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by this Court or grounded in the constitution." *Republican Party of New Mexico v. New Mexico Taxation and Revenue Department*, 2012-NMSC-026, ¶ 16.

For your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov). If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Bella Davis

---

<sup>1</sup> The Department also stated in response to our inquiry that it received "an amended request" from Ms. Davis "seeking only the zip codes for inmates" and that it denied this request on the basis that it was not obligated to create a record in response to a request. *See* § 14-2-8(B) ("Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record."). To the extent that Ms. Davis may have subsequently asked the Department to provide her a list of zip codes it did not already possess, we would agree that her amended request likely required the creation of a record. Here, however, Ms. Davis requested "[r]ecords containing" inmate addresses, which is not the same as requesting that the Department create a list of compiled inmate addresses.